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No. 554

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Supreme Court of the United States

OCTOBER TERM, 1947

JACK PRINCIPALE,

Petitioner,

—v.—

GENERAL PUBLIC UTILITIES CORPORATION as Successor to Associated Gas and Electric Company and ASSOCIATED GAS AND ELECTRIC CORPORATION,

Respondents.

PETITION FOR REHEARING

JACK PRINCIPALE,
Petitioner pro-se.

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PETITION FOR REHEARING

Claimant respectfully petitions that the Court grant it a rehearing in the above-entitled appeal. As grounds for this request the claimant-appellant respectfully alleges:

The Petitioner's dealings with Associated Gas and Electric Company were in the recognized order of purchases of outstanding securities held in the hands of the general public and purchased in the open market at prevailing and fluctuating prices which is the general practice of free enterprise governed by The Uniform Stock Transfer Act and The Bankruptcy Act—(Public No. 696—75th Congress) approved July 1, 1898.

It is respectfully urged that this Act requires upon rehearing that the Petitioner is entitled to participate under the Plan of Reorganization of Ageco as the legal holder in due course of the 6% and 7% Convertible Obligations due 2002, Series A and the $7.00 Dividend Series Preferred Stock of the same series. Participation should be based on

the high market range for the year 1946 with respect to all rights to liquidations and dividends thereon accrued.

The aforementioned securities now held by the Petitioner were called in for conversion in 1932. However, the Petitioner acquired these securities from the general public, some were original holders, others were not—but, such of the following securities which are now owned by the Petitioner,

> 7% Convertible Obligations due 2002, Series A
> 6% Convertible Obligations due 2002, Series A
> $7.00 Dividend Series Preferred Stock

were issued in exchange for the 6% and 7% Convertible Debenture Certificates and were called in for conversion in 1932 and which according to the terms of the Plan are Participating Securities, therefore, the Petitioner, as the owner of such securities, COs which were exchanged for CDCs participates under the terms of the Plan.

The Plan of Reorganization of Ageco reads:

> SUCH OF THE FOLLOWING SECURITIES OF AGECO (COs) AS WERE ISSUED IN EXCHANGE FOR THE SECURITIES ENUMERATED IN ITEM 7 (CDCs) And As Remain In The Hands Of Original Holders: (See Excerpts From Plan of Reorganization on pages 3 and 4 in the Appendix to Appellant's Brief).

In determining the values of the Petitioner's class of securities, their contract rights with respect to distribution of assets on redemption on liquidation of the enterprise no weight or liquidation was given to the Petitioner's securi-

ties, these Senior Convertible Obligations were divided into two classes, one called Original Holders, the other classified as non-Original Holders. If there were sufficient assets to cover the Original Holders of these Senior Obligations, would it be unfair and inequitable to deny the Petitioner his contractual rights with respect to the distribution of these same assets?

The Circuit Court of Appeals erred in its determination in excluding the Petitioner a non-original holder from participation under the Plan of Reorganization of Ageco on the theory that under the New York law "a claim for fraud or misrepresentation in connection with an obligation evidencing a debt * * * does not pass merely with the transfer of the obligation itself, where there are lacking special words of assignment * * *; forecloses non-original holders of COs, of whatever series, from asserting any such claim." (Page 9 of Appendix to Appellant's Brief.)

In the brief for Respondent in opposition, the Attorney for General Public Utilities Corporation states on page 9 that:

> There was no fraud in the exchanges (see reference to ruling of the Special Master which is found at page 640 of the Circuit Court of Appeals decision in 143 Fed. 2d).

Both statements contradict each other, however, since these statements were used in excluding the petitioner from participation under the Plan, it stands to reason that if there has been no fraud in the exchange of CDCs for COs, then special words of assignment are not necessary. The assignment evidenced by the form on the reverse side of the Petitioner's securities entitles him to enforce his claims as a participant under the Plan or under General Claims, or in

the determination of values with respect to the distribution of assets on redemption or liquidation of the enterprise.

Most of the securities owned by the Petitioner were issued in exchange for the 6% and 7% Convertible Debenture Certificates, series A, of Associated Gas and Electric Company. The $7 Dividend Series Preferred Stock were issued per Requisition #NMX-436 and #NAX-85 Original Issues of G. E. Employees Securities Corporations and Electrical Securities Corporation. Therefore, if there was no fraud in the exchanges of these securities from CDCs into COs, then the Petitioner has been unlawfully denied his claims. DX 647 is one of the Convertible Obligations acquired by the Petitioner from the Original Holder, it was registered in the name of Bessie M. Zechman for $3,300 principal amount. It was issued on June 10, 1932 in exchange for a 6% Convertible Debenture Certificate, Series A, of Associated Gas and Electric Company. Since there was no fraud involved in the exchange according to the argument presented by the Respondent on page 9 of his brief, then, all that is necessary to make the transaction complete is the transfer evidenced on the back of Certificate DX 647, special words of assignment are not necessary. The Petitioner's rights to the assets are equal to that of the original holder of Certificate DX, registered in the name of Bessie W. Zechman.

The question of the Constitutional rights of the Petitioner as to his rights of a legitimate transfer as provided in (Public No. 696—75th Congress) of the Bankruptcy Act, Sections 70 (D) 1 and 5 which states that:

> "(1) A transfer of any property of the bankrupt, other than real estate, made to a person acting in good faith, shall be valid against the trustee if made for a present fair equivalent value or, if not made for a present fair equivalent value, then to the extent

of the present consideration actually paid therefor, *for which amount the transferee shall have a lien upon the property so transferred*:

"(5) Provided, however, That nothing in this Act shall impair the negotiability of currency or negotiable instruments."

Furthermore, should the claim of the Petitioner be denied, as a legal successor of an Original Holder with a valid claim against General Public Utilities to the corporate property in question, the fact that discrimination was shown by allowing one group of Original Holders of senior COs totaling $20,000,000 and 17,500 shares to participate under the Plan while depriving $22,090,000 Non-Original Holders and 623,867 Holders of the $6, $6½ and $7 Preferred shares to be frozen under the Plan because of an unjust theory that the Original Holders may have a claim for fraud in connection with the exchange, a statement which is inconsistent with the ruling of the Special Master and the Respondent in the argument on page 9 which states *that there was no fraud in the exchanges.* On the basis of a total capitalization of $772,792,493.50 which does not include "Foreign subsidiaries" totaling $21,565,458.32 and appropriations from the United States Government of $400,000,000 for payment of War Damage claims arising in the Philippine Islands which indicates equity in excess of the new Capitalized General Public Utilities Corporation which consists of 10,000,000 shares of $5 par value of which 7,536,500 shares will be issued to holders of, and general claims against, Ageco and Agecorp, leaving a total of 2,463,500 shares in reserve for issuance subject to the order of the United States District Court for the Southern District of New York. These facts prove conclusively that while giving one group of public security holders preference over the same class of public held securities of the

Petitioner by denying his equity rights, the fact that the total Capitalization Value of Ageco including the assets of the Foreign Subsidiaries of over three-quarter of a billion dollars was well in excess of the capitalization of the succeeding company General Public Utilities Corporation and if distributed on the liquidation of the enterprise, the claim of the Petitioner in relation to his holdings of the 6% and 7% Convertible Obligations and $7 Preferred Stocks would allow him the full capitalized value of his securities including unpaid cumulative dividends.

In view of the small amount of Original Holders which total to about less than 8% who have exchanged their Public held COs for the new securities of General Public Utilities Corporation, in view of the large amount of securities of the said Corporation which are left undisturbed and reserved for issuance subject to the order of the United States District Court for the Southern District of New York, in view of the fact that there was no fraud in the conversion of CDCs for COs and in view of the fact that the Total Capitalization of Ageco was well in excess of the new General Public Utilities Corporation, the Petitioner leaves to this Court the question of:

1. Whether he is a participant under the Plan of Reorganization.
2. Whether his claims are General Claims.
3. Whether on the basis of the liquidation of the enterprise the Petitioner in relation to his holdings is entitled to the full face value of One Hundred Dollars ($100.00) per share, and an amount equal to the unpaid cumulative dividends thereon accrued. (See Schedule A on page 17 of Petitioner's Petition For Writ of Certiorari.)

CONCLUSION

The decision of the Circuit Court of Appeals and the Respondent state that no fraud existed in the exchanges of Convertible Debenture Obligations for Convertible Obligations, therefore, *no special words of assignment are necessary on the back of the securities involved.* The Petitioner is, according to the terms of the Plan of Ageco, a participant as the legal holder of CDCs which were exchanged for COs during the Conversion in 1932. The rights of the Petitioner are equal to that of the Original Holder. The constitutionality of negotiable instruments under the Congressional Act of 1898 is a matter for this Court to decide. The question of general importance to be decided regardless of the fact that the lower Court approved the Plan of Reorganization, is the fact that the capitalized value of the securities of Associated Gas & Electric Company on the Liquidation Value of the enterprise was well in excess of the new Capitalized General Public Utilities Corporation. Petitioner therefore respectfully prays that a petition for a rehearing will be granted.

Dated: March 25th, 1948.

Respectfully submitted,

JACK PRINCIPALE,
Petitioner.

Certificate of Counsel

I, JACK PRINCIPALE, petitioner pro-se, do hereby certify that the foregoing petition for a rehearing is presented in good faith and not for delay, and is restricted to grounds not previously presented.

JACK PRINCIPALE
Petitioner